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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re OMAR C., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

OMAR C.,

Defendant and Appellant.

D049141

(Super. Ct. No. J211140)

APPEAL from an order of the Superior Court of San Diego County, S. Charles Wickersham and Federico Castro, Judges. Affirmed in part and reversed in part.

The juvenile court declared Omar C. a ward (Welf. & Inst. Code, § 602) after he was found guilty of carjacking (Pen. Code, § 215, subd. (a)),¹ assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)), grand theft of an automobile

¹ All statutory references are to the Penal Code unless otherwise indicated.

(§ 487, subd. (d)), taking or driving a stolen vehicle (Veh. Code, § 10851, subd. (a)), and possession of a dirk or dagger (§ 12020, subd. (a)(4)). The court placed him on probation and committed him to Camp Barrett for a maximum 365 days. Omar contends the trial court erred in finding he violated Vehicle Code section 10851, subdivision (a), because section 10851, subdivision (a) is a lesser included offense within grand theft of an automobile.

FACTS

Viewing the record in the light most favorable to the judgment below (*People v. Johnson* (1980) 26 Cal.3d 557, 576), the following occurred. Around midnight on November 7, 2005, Robert Shirley borrowed a friend's car to take a group of people home from the friend's apartment. Omar was sitting in the rear seat behind Shirley. A male sitting in the front passenger seat hit Shirley in the face. Shirley was grabbed from behind, he believes by Omar, and was beaten. Shirley was pulled from the car by one of the males and then kicked several times. The assailants returned to the car and drove off.

DISCUSSION

The People concede the trial court erred in finding Omar violated both Vehicle Code section 10851, subdivision (a) and Penal Code section 487, subdivision (d). A defendant cannot be convicted of both an offense and a second offense that is based on and necessarily included within the first offense. (*People v. Sanchez* (2001) 24 Cal.4th 983, 988.) A conviction of stealing a vehicle in violation of Vehicle Code section 10851, subdivision (a) is conviction of a lesser offense of grand theft auto. (*People v. Barrick* (1982) 33 Cal.3d 115, 128.)

DISPOSITON

The court's finding that Omar violated Vehicle Code section 10851, subdivision (a) is reversed. The remainder of the juvenile court order is affirmed. The trial court shall modify its minutes to so reflect.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.